



## Department of Public Service

Three Empire State Plaza, Albany, NY 12223-1350  
www.dps.ny.gov

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March 16, 2022

### *Filed electronically Via ECFS*

Marlene H. Dortch  
Office of Secretary  
Federal Communications Commission  
445 Fifth Street, SW, Suite TW-A325  
Washington, DC 20554

Re: WC Docket No. 21-450, In the Matter of the Implementation of the  
Affordable Connectivity Program.

Dear Secretary Dortch:

The New York State Public Service Commission (NYPSC) respectfully submits these comments in response to the Further Notice of Proposed Rulemaking (Notice) prepared by the Federal Communications Commission (FCC) in the above-referenced proceeding.<sup>1</sup> By way of background, the Consolidated Appropriations Act of 2021 established an Emergency Broadband Connectivity Fund (Fund) of \$3.2 billion and directed the FCC to administer the Fund through the temporary Emergency Broadband Benefit Program (EBBP). The Infrastructure Investment and Jobs Act of 2021 (Infrastructure Act) modified and extended the EBBP into a permanent program and renamed it the Affordable Connectivity Program (the ACP). The Notice seeks, among other things, further comments on how best to implement the outreach programs included as part of the Infrastructure Act.

The NYPSC continues to strongly support the ACP and its focus on forwarding the goals of the EBBP to provide eligible households with much needed discounts for their broadband services, while allowing participating providers to receive reimbursements for those services. The NYPSC believes that to further the goals of the ACP and help close the digital divide there should be robust consumer outreach efforts that are efficient and focused on reaching those most in need. While the ACP is now a permanent program, participation remains voluntary, and providers must affirmatively elect to participate. As such, it is imperative that any efforts on

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<sup>1</sup> Pursuant to New York Public Service Law (PSL) §12, the General Counsel, under the direction of the Chairman, is authorized to file comments on behalf of the NYPSC.

consumer outreach and education be targeted to those most in need of this vital support while maintaining efficient use of any funding.

Importantly, the Program will build upon New York’s continuing efforts to ensure that all residents have broadband availability. Most recently Governor Kathy Hochul launched the \$1 billion ConnectALL initiative, which supports the implementation and delivery of broadband services through this and any other available programs.<sup>2</sup> As part of this effort the New York Department of Public Service (NYSDPS) has led a multi-agency outreach effort to maximize participation in the ACP.<sup>3</sup> In partnership with the FCC, which has provided outreach materials that were used in the State campaign, the agencies have used social media, direct mail, and other mechanisms to inform New Yorkers about the ACP. As a result of this effort, nearly 100,000 additional New York households have signed up for ACP over the two months since the initiative was launched.

### *Outreach Grant Program*

The FCC notes that while the Infrastructure Act allows for the use of funding toward consumer outreach and education, the agency does not have much experience in administering such efforts. Nevertheless, the FCC acknowledges the strong support for establishing such a program. The NYPSC agrees. The importance of effective consumer outreach and education cannot be overstated, especially with regard to enrollment in the ACP. To effectuate this goal, the grant program should allow for multiple and flexible options where recipients, in consultation with appropriate state agencies, can best determine how to reach low-income consumers in their respective service territories. However, reasonable oversight of the grant recipients should be required.

Participating providers should be required to report on how the funding is being used, including, but not limited to, the methods used for performing outreach and education. Additionally, participating providers should be required to keep track of the effectiveness of their outreach and education, such as noting whether enrollments of eligible households increase by asking eligible households how they became aware of the Program at the time of signing up. This information should be used by both the FCC and the participating providers to periodically adjust how outreach and education is used to best reach eligible households who might otherwise not be aware of the ACP or its benefits. By ensuring the collection and review of certain metrics, and periodically adjusting the methodology used for outreach and education, the funding

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<sup>2</sup> “Governor Hochul Announces New \$1 Billion ‘ConnectALL’ Initiative to Bring Affordable Broadband to Millions of New Yorkers,” Press Release dated January 5, 2022, available online at: <https://www.governor.ny.gov/news/governor-hochul-announces-new-1-billion-connectall-initiative-bring-affordable-broadband>.

<sup>3</sup> “Governor Hochul Announces Up To \$30/Month Discount With Federal Affordable Connectivity Program,” Press Release dated January 10, 2022, available online at: <https://www.governor.ny.gov/news/governor-hochul-announces-30month-discount-federal-affordable-connectivity-program>.

allocated toward any grant program can be tailored to ensure that eligible households are fully aware of the benefits provided by the ACP.

*Enhanced Benefit for High-Cost Areas*

The Notice notes that the Infrastructure Act provides for a separate enhanced benefit for low-income households that are served by providers in high-cost areas. Under the ACP, eligible low-income households may ordinarily receive a monthly discount of up to \$30.00 off the cost of their broadband service, and participating providers can receive a reimbursement for such discounts. The enhanced high-cost benefit of up to \$75.00 per month is available for broadband service offered by participating providers in high-cost areas, upon a showing that the ordinary \$30.00 per month ACP benefit “would cause particularized economic hardship to the provider such that the provider may not be able to maintain the operation of part or all of its broadband network.”<sup>4</sup>

The Notice seeks comments on the definition of high-cost areas, asking whether such high-cost areas “need to be unserved high-cost areas, as defined in the Infrastructure Act, or if they can all be high-cost areas generally, whether served or unserved by an existing broadband provider.”<sup>5</sup> The NYPSC strongly believes that the definition of high-cost areas should include areas that have already been built out by an existing broadband provider. The text of the Infrastructure Act supports such an interpretation. According to Section 1752(a)(7)(B), the high-cost benefit may be provided where providers can show an economic hardship “such that the provider may not be able **to maintain the operation of part or all of its broadband network.**” (Emphasis added).<sup>6</sup> Insofar as maintaining broadband networks is an ongoing function subsequent to construction and deployment, this language suggests that the necessary demonstration of economic hardship prior to offering a high-cost benefit is meant to apply to already built portions of a service area.

While such a definition would be beneficial to consumers throughout the country, it would be especially valuable in states like New York, where there have been multiple efforts underway for several years to accelerate broadband network deployment in unserved and underserved areas. As noted above, New York continues to be on the forefront of broadband deployment in high-cost areas through, for example, Governor Hochul’s January 2022 announcement of New York’s \$1 billion ConnectALL initiative. Moreover, past initiatives include network build-out conditions imposed on Charter Communications, Inc. (Charter) in the

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<sup>4</sup> Notice ¶ 287.

<sup>5</sup> Notice ¶ 288.

<sup>6</sup> 47 U.S.C. § 1752(a)(7)(B).

NYPSC's 2016 Order<sup>7</sup> approving the Charter-Time Warner merger as well as the \$500 million New NY Broadband Program.<sup>8</sup>

*Pilot Program Focused on Eligible Households Participating in Federal Public Housing Assistance Programs*

The Notice seeks comment on a proposal to launch a pilot program focused on expanding ACP participation by federal public housing assistance (FPHA) beneficiaries, including increasing awareness and assisting with navigating the enrollment process. NYSPSC strongly supports the establishment of a pilot program of this nature. Unique and targeted outreach to this population will be necessary to meaningfully expand enrollment. Moreover, providing partners at the state or local level with access to the National Verified or other tools required for ACP enrollment will better equip these critical local partners to support communities in need, including FPHA beneficiaries.

Moreover, the FCC should examine means to simplify ACP enrollment for FPHA beneficiaries and other beneficiaries of federal or state programs that guarantee ACP eligibility. Such beneficiaries should have a streamlined means to enrollment that can be managed and advanced at the local or state level, in part, utilizing the increased access to relevant tools as outlined above. For example, a state housing provider could be able to administer ACP enrollment locally, requesting simple documentation from FPHA beneficiaries, then enrolling such individuals collectively or on a simplified or expedited basis.

*Conclusion*

While the ACP continues the original intent and goals of the EBBP that have provided significant relief for New Yorkers and others throughout the nation, it is important to ensure that any additional funding is used in an efficient and effective manner. Effective consumer outreach and education is essential to ensuring that the support offered by the ACP is utilized as fully as possible. New York has successfully encouraged a large number of wired and wireless broadband service providers to operate in the State, many of whom are already participating in the ACP Program. The NYPSC continues to support the FCC's efforts to both quickly implement the ACP and ensure the required provisions of the Infrastructure Act are implemented in a way that helps mitigate waste, fraud, and abuse. Finally, in the context of the ACP's enhanced benefit for high-cost areas, the NYPSC believes that the definition of high-cost area should encompass areas that have already been built out by an existing broadband networks.

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<sup>7</sup> See, Case 15-M-0388, Charter Communications and Time Warner Cable -Transfer of Control, Order Granting Joint Petition Subject to Conditions (issued January 8, 2016) (wherein the NYPSC required Charter to pass an additional 145,000 unserved and underserved premises).

<sup>8</sup> In 2015, New York State made an initial \$500 million investment with the New NY Broadband program - the largest state broadband investment in the nation at the time.

Respectfully submitted,

/s/ Robert Rosenthal

Robert Rosenthal

General Counsel

New York State Public Service Commission

Three Empire State Plaza

Albany, NY 12223-1350